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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1372

CHESTER BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

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No.

CHESTER BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: *The Honorable Chief Justice And The Associate Justices Of The United States Supreme Court:*

Petitioner, Chester Brown, respectfully prays that the Court issue a Writ of Certiorari to review a judgment of the United States Court of Appeals for the Seventh Circuit affirming that he is guilty of a violation of a federal criminal statute relating to narcotic drugs as he has been so adjudged to be guilty by the United States District Court for the Northern District of Illinois, Eastern Division.

REFERENCE TO OPINION BELOW.

The opinion of the Court of Appeals is appended hereto. The opinion has not yet been reported. The judgment order and order denying petition for rehearing are also appended hereto.

JURISDICTIONAL STATEMENT.

The jurisdiction of this Court is invoked pursuant to Rule 19-1 (b) on the grounds that the Court of Appeals for the Seventh Circuit has decided a federal question of whether no probable cause existed for a warrantless arrest of Petitioner, and whether evidence obtained upon and as a result of that warrantless arrest was improperly received in evidence at Petitioner's trial in the District Court, "in a way in conflict with the applicable decisions of this Court."[1]

The judgment of the Court of Appeals affirming Petitioner's conviction in the District Court for the Northern District of Illinois, Eastern Division, was made and entered on January 4, 1971.

A Petition for Rehearing, filed by Petitioner herein, was denied by the Court of Appeals on January 21, 1971.

The statutory provision conferring jurisdiction on this Court to review the judgment in question by Writ of

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[1] Quoted language from United States Supreme Court Rule 19-1 (b).

Certiorari is the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. Sec. 1254 (1).[2]

QUESTIONS PRESENTED.

Whether Petitioner's constitutional rights guaranteed by the Fourth Amendment to the United States Constitution were violated by a wrongful arrest made without probable cause, and whether the use of evidence obtained as a result of the said wrongful arrest was unlawfully received at Petitioner's trial, and his motion to suppress that evidence improperly overruled.

CONSTITUTIONAL PROVISIONS AND STATUTES OF THE UNITED STATES INVOLVED IN THE CASE.

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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[2] "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the Petition of any party to any civil or criminal case before or after rendition of judgment or decree." 28 U.S.C.A., Sec. 1254 (1)

Title 21, Section 174 United States Code
(Title 21, U.S.C.A. Sec. 174)

Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. From a second or subsequent offense (as determined under section 7237 (c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

. . .

Title 26 U.S.C.A. Sec. 7607

The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs (as defined in section 401(1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401 (1)), may—

(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States, and

(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

Added July 18, 1956, c. 629, Title I, § 104(a), 70 Stat. 570.

STATEMENT OF THE CASE.

Petitioner, Chester Brown, was jointly indicted with one Willie Morgan for having allegedly unlawfully concealed, bought, sold and facilitated the transportation of a quantity of heroin, a narcotic drug, in violation of Title 21, Section 174 of the United States Code. Co-defendant, Willie Morgan, filed a petition to suppress evidence in which Petitioner joined during the hearing of said petition which was conducted prior to trial. At the conclusion of the hearing of the motion to suppress evidence the district judge denied the motion upon a finding that the evidence at the hearing had sufficiently established the reliability of an informer of federal agents, and that the information received from the informer was sufficient "to warrant the action that the agents took in this case and to proceed in making the arrest of the defendants . . ." (A. 76, Tr. 196)

NOTE: Reference letter "A" refers to Appendix used in the Court of Appeals; reference letter "Tr." refers to transcript of record in District Court used on appeal.

Petitioner was thereupon tried separately from his said co-defendant before a jury. During the trial he objected to the introduction of the evidence sought to be suppressed prior to trial and the evidence was admitted over his objection.

Petitioner unsuccessfully moved for a directed verdict and a judgment of acquittal at the close of the Government's case. He offered no testimony or evidence and the jury returned a verdict that he was guilty as charged.

Petitioner's post-trial motions for judgment of acquittal and for a new trial were denied, and he was sentenced to imprisonment for a term of ten years.

His appeal to the Court of Appeals for the Seventh Circuit, based in part upon his contention that evidence used against him had been unlawfully obtained, and had been unlawfully admitted at his trial, has been unsuccessful as shown above.

The facts presented to the District Court at the hearing of the motion to suppress evidence are as follows:

On March 21, 1968, agents of the Federal Bureau of Narcotics and dangerous drugs at Chicago, Illinois, arrested Petitioner and one Willie Morgan. As a result of the arrest the agents secured a package of heroin. The arrest was warrantless.

At the moment of the arrest Agent Hill[1] was armed with information from an unnamed informer that on

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[1] Agent Hill, one of the two federal narcotic agents who arrested Petitioner, was the only one of the two who testified at the hearing on the motion to suppress. A third agent, Cloud, testified at the hearing as to the obtainment of the evidence.

March 21, 1968, Petitioner was to deliver some heroin to Willie Morgan. He had been told by the informer that Willie Morgan had received heroin from Petitioner on some undetermined occasion and that Petitioner was to deliver some heroin to Willie Morgan on March 20, 1968. He had observed Petitioner appear to hand something to Willie Morgan on March 20, 1968. He had observed Petitioner enter an auto driven by Willie Morgan on March 21, 1968, drive to an address that Petitioner entered while Morgan went into a restaurant, and had observed both re-enter the auto and Morgan drive it away. He knew that both Petitioner and Morgan had been previously convicted for narcotic offenses. The warrantless arrest of Petitioner and Morgan took place immediately after they drove away from the address Petitioner had entered on March 21, 1968.

The jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division, was invoked because the alleged violation of the federal criminal statute involved, for which Petitioner was indicted by the March, 1968 federal grand jury then sitting in that District, was allegedly committed within that district in the City of Chicago, State of Illinois.

ARGUMENT OF REASONS FOR ALLOWANCE OF THE WRIT.

THE INFORMATION POSSESSED BY FEDERAL AGENTS AT THE TIME OF THE WARRANTLESS ARREST OF PETITIONER WAS NEITHER SUFFICIENTLY PARTICULAR NOR RELIABLE TO SUPPORT PROBABLE CAUSE FOR THE WARRANTLESS ARREST, AND THE COURT OF APPEALS MISAPPLIED THE PRINCIPLES ENUNCIATED BY THIS HONORABLE COURT IN DRAPER v. UNITED STATES, OVERLOOKED THE OPINION OF THE COURT IN BECK v. OHIO, AND MISAPPREHENDED THE OPINIONS OF THE COURT IN AGUILAR v. TEXAS, AND SPINELLI v. UNITED STATES.[1]

The Court of Appeals disposed of the question of whether probable cause existed for the agents' arrest of Petitioner on March 21, 1968 in the following language:

> "The evidence in this case meets the standards found sufficient in *Draper* v. *United States,* 358 U.S. 307 (1969), and rises above the shortcomings found deficient in *Aguilar* v. *Texas,* 378 U.S. 410 (1964) and *Spinelli* v. *United States,* 393 U.S. 410 (1969). See *McCray* v. *Illinois,* 386 U.S. 300 (1967) and *United States* v. *Commissiong,* 2 Cir., 429 F. 2d 837 (1970)."[2]

The Court also said that the evidence at the hearing of the motion to suppress had led it to a "firm conviction that the totality of information possessed by the agents

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[1] *Draper* v. *United States,* 358 U.S. 307, 3 L. Ed. 327, 79 S. Ct. 329 (1969); *Beck* v. *Ohio,* 379 U.S. 89, 13 L. Ed. 142, 85 S. Ct. 223 (1964); *Aguilar* v. *Texas,* 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964); *Spinelli* v. *United States,* 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969).

[2] Page 5 of the Opinion.

under the circumstances of this case was sufficient to establish probable cause."

The information of the arresting agents, who made the warrantless arrest in this case, possessed neither the reliability nor the particularity of the information of the arresting agents who made the warrantless arrest in *Draper* v. *United States.* In *Draper* the time of day of the offense, the clothing the suspect would be wearing while committing the offense, the mode of transportation of the suspect and the route of his travel, and a precise description of the bag he would be carrying was supplied to the agents by the informer. Before making the arrest the agents had observed all those things occur at the time the informer said that they would occur; the suspect arrived where the informer said he would after using the mode of travel over the route the informer had said he would; the suspect wore precisely the clothing the informer said he would be wearing while committing the offense; the suspect carried a bag precisely fitting the description of the bag that the informer said he would be carrying while committing the offense. See *Draper* v. *U. S.,* 358 U.S. 309, 3 L. Ed. 2d 329.

The agents in the case at bar (1) were not supplied precise particular information as were the agents in *Draper,* and (2) they did not obtain corroborating knowledge, from their own observation or any other source, of the imprecise information that was supplied them. Here the agents acted upon merely the word of the informer that somewhere, sometime and in some manner, all undisclosed and unknown to them, Willie Morgan was going to receive heroin from Petitioner on March 21,

1968. The informer had not told them even how he came by the knowledge that supported his prediction that Morgan would receive heroin from Petitioner on March 21, 1968, so that the agents might have assessed the reliability of the informer's information, and so that they might have determined or formed a reasonable belief of whether the informer's informer, if any, was reliable.

The facts in the case at bar are clearly distinguishable from those in *Draper* and do not meet the *Draper* standards of information and knowledge that permits a warrantless arrest by federal agents under the provisions of Title 26, Section 7607, U.S.C.A., and without violation of the provisions of the Fourth Amendment to the United States Constitution.

After *Draper*, this Honorable Court decided an issue of probable cause for warrantless arrest in the case of *Aguilar* v. *Texas,* 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964). Later in the same year that the Court decided *Aguilar,* the Court decided the case of *Beck* v. *Ohio,* 379 U.S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223 (1964).

The arrest for which no probable cause was found in *Aguilar* was made with a warrant but, as the Court said in *Beck, supra*:

> "Whether or not the requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent they surely cannot be less stringent than where an arrest warrant is obtained. Otherwise, a principal incentive now existing for the procurement of arrest warrants would be destroyed. *Wong Sun* v. *United States,* 371 U.S. 471, 479, 9 L. Ed. 2d 441, 88 S. Ct. 407." (*Beck* v. *Ohio,* 379 U.S. 96, 13 L. Ed. 2d 147).

In *Beck* the Court found that, before the warrantless arrest, the officers possessed a picture of the suspect and knew what he looked like, knew that he had "a record in connection with clearing house a scheme of chance", and had heard reports and found that the suspect had been previously convicted or previously arrested for clearing house violations.[1] They had not been informed by the informer that the suspect could be found where they had seen and arrested him, and they had not "heard, smelled or otherwise perceived anything else to give them ground for belief that the Petitioner had acted or was then acting unlawfully." (*Beck* v. *Ohio*, 379 U.S. 93-94, 13 L. Ed. 2d 146-147). The Court found that the information was insufficient to meet the standards of *Draper* v. *United States, supra,* and observed that several cases, including *Aguilar* v. *Texas,* 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509, demanded a greater showing of probable cause than that found in *Beck,* even in cases where warrants had been obtained. (*Beck* v. *Ohio,* 379 U.S. 147, 13 L. Ed. 2d 147-148).

The information of the arresting agents in the case at bar is quite obviously and very apparently closer to that found to be insufficient to support probable cause for warrantless arrest in *Beck,* than that found sufficient to support warrantless arrest in *Draper.*

In *Aguilar* v. *Texas, supra,* the Court met squarely the issue of whether the probable cause requirement of reliability of information is sufficiently met where the affiant in a case in which a warrant was issued (and therefore the agent receiving the information and acting

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[1] See *Beck* v. *Ohio,* 379 U.S. 93-94, 13 L. Ed. 2d 146-147, and Footnote 3.

upon it where no warrant was issued), did not have personal knowledge of the suspect's commission or proposed commission of an offense, or even knowledge of whether the informer "spoke with personal knowledge." The Court found that the arrest warrant had been issued without probable cause where the Affidavit contained no allegations of personal knowledge of the Affiant or that Affiant's informer had personal knowledge of the information he supplied to the Affiant. The Court said (*Aguilar* v. *Texas,* 378 U.S. 113, 12 L. Ed. 2d 728):

> "The vice in the present affidavit is at least as great as in *Nathanson* and *Giordenello.* Here the 'mere conclusion' that petitioner possessed narcotics was not even that of the affiant himself; it was that of an unidentified informant. The affidavit here not only 'contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein,' it does not even contain an 'affirmative allegation' that the affiant's unidentified source 'spoke with personal knowledge.' For all that appears, the source here merely suspected, believed or concluded that there were narcotics in petitioner's 'possession.' The magistrate here certainly could not 'judge for himself the persuasiveness of the facts relied on . . . to show probable cause.' He necessarily accepted 'without question' the informant's 'suspicion,' 'belief' or 'mere conclusion.'
>
> Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones* v. *United States,* 362 U.S. 257, 4 L. ed. 2d 697, 80 S. Ct. 725, 78 ALR 2d 233, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the

informant, whose identity need not be disclosed, see *Rugendorf* v. *United States,* 376 U.S. 528, 11 L. ed. 2d 887, 84 S. Ct. 825, was 'credible' or his information 'reliable.' Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime,' *Giordenello* v. *United States, supra,* 357 U.S. at 486, 2 L. ed. 2d at 1509; *Johnson* v. *United States, supra,* 333 U.S. at 14, 92 L. ed. at 440, or, as in this case, by an unidentified informant.

We conclude, therefore, that the search warrant should not have been issued because the affidavit did not provide a sufficient basis for a finding of probable cause and that the evidence obtained as a result of the search warrant was inadmissible in petitioner's trial."

In the case at bar there is no showing whatever of how the informer knew that Petitioner was "going to" deliver heroin to Morgan on March 21, 1968. There is no showing that the source, if any, of his information was reliable. From the record in this case the informer may have "merely suspected, believed or concluded" or even guessed or lied that "Morgan was going to obtain more heroin" from Petitioner on March 21, 1968. (See A. 50, Tr. 56-57). Upon adding the requirements of *Aguilar* to those of *Beck* v. *Ohio,* the information in the case at bar must be considered to be without sufficient reliability to establish probable cause for a warrantless arrest, even if the lack of particularity of information required by *Draper* v. *United States* is overlooked.

The opinion of this Honorable Court in *Spinelli* v. *United States,* 393 U.S. 410, 21 L. ed. 2d 637, 89 S. Ct. 584 (1969), decided more than five years after *Aguilar* and *Beck* and ten years after *Draper,* asserted the particularity of information required by *Draper,* the reliability of information required by *Aguilar,* and the probability of criminal activity, as opposed to a prima facie showing of criminal activity, required by *Beck,* as the proper and indispensable standards for judging probable cause for warrantless arrest. Judged by those standards, the affidavit in *Spinelli* was held to be insufficient to support probable cause. The most important reason for that insufficiency was described by the Court as follows:

> "Perhaps even more important is the fact that *Aguilar's* other test has not been satisfied. The tip does not contain a sufficient statement of the underlying circumstances from which the informer concluded that Spinelli was running a bookmaking operation. We are not told how the FBI's source received his information—it is not alleged that the informant personally observed Spinelli at work or that he had even placed a bet with him. Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable. Cf. *Jaben* v. *United States,* 381 U.S. 214, 14 L. Ed. 2d 345, 85 S. Ct. 1365 (1965). In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation."

In the case at bar the informer's information was not corroborated. The only attempt at corroboration was the agent's observation of Petitioner and Morgan meet at some distance away from them on March 20, 1968, and Petitioner appear to hand something to Morgan (See A. 50, Tr. 54-55), and this had occurred on a tip concerning the day before the tip on the day of the arrest.[1] But *Spinelli* is clear that "A magistrate" (and therefore the officer in a warrantless arrest as in the case at bar) "cannot be said to have properly discharged his constitutional duty if he relies on an informer's tip which—*even when partially corroborated*[*]—is not as reliable as one which passes *Aguilar's* requirements when standing alone."

It is respectfully suggested that the information possessed by the agents in the case at bar would have been insufficient to obtain a warrant from a magistrate. It is further suggested that if the opinion of the Court of Appeals that the information in this case is sufficient to support a warrantless arrest is allowed to stand, then a principal incentive now existing for the procurement of arrest warrants will be destroyed, and law enforcement officials will be permitted to and encouraged to bypass the safeguards of objective determination of probable cause and to substitute the far less reliable procedure of an after-the-event justification for arrest and search which is too likely to be influenced by the familiar

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[1] The agents apparently did not consider the observation of Petitioner's appearing to hand something to Morgan sufficient to justify a warrantless arrest on March 20, 1968, or even sufficient to seek the issuance of a warrant by a magistrate.

[*] Emphasis Ours.

shortcomings of hindsight judgment. (See *Beck* v. *Ohio*, 379 U.S. 96, 13 L. ed. 2d 147).

Respectfully submitted,

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APPENDIX

OPINION OF COURT BELOW

In the United States Court of Appeals For the Seventh Circuit

SEPTEMBER TERM, 1970—SEPTEMBER SESSION, 1970

No. 17633
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CHESTER BROWN,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JANUARY 4, 1971

Before HASTINGS, *Senior Circuit Judge,* and KILEY and FAIRCHILD, *Circuit Judges.*

HASTINGS, *Senior Circuit Judge.* Defendant Chester Brown, together with co-defendant Willie Morgan, was charged in a one count indictment with a violation of Title 21, U.S.C.A. § 174. It was alleged therein that on or about March 21, 1968, at Chicago, Illinois, "defendants, fraudulently and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of approximately 20.980 grams of heroin, a narcotic drug, * * *."

Brown joined in Morgan's pretrial motion to suppress evidence on the ground that the federal narcotics agents lacked probable cause to arrest defendants and to search their automobile without a warrant. After a hearing on the motion to suppress, the trial court denied the motion,

holding that the facts and information possessed by the agents amply provided probable cause for the arrest of defendants on March 21, 1968.

Subsequently, a severance was granted and Brown alone was tried by a jury which returned a verdict of guilty. Judgment was entered thereon and Brown was sentenced to imprisonment for a period of ten years. Defendant appeals. We affirm.

At all relevant times Brown was personally present in court and was represented by privately employed counsel.

Two issues remain for consideration on this appeal, viz: (1) whether probable cause existed for the agents to make a warrantless arrest; and (2) whether the evidence at trial was sufficient to support the jury verdict of guilt.[1]

From our consideration of the record of the hearing on the motion to suppress, the district court could have found the following narrative to have been clearly established. Agent Hill had been employed in the Bureau of Narcotics in Chicago for almost six years and had acquired professional expertise in the investigation and apprehension of narcotic violators. He had five contacts with an unnamed informer prior to defendant's arrest on March 21, 1968. No question is raised on this appeal concerning the disclosure of such informer.

Agent Hill testified that on October 17, 1967 he met with the informer, whom he had known for at least one year prior thereto but had never before used as an informer. At this first meeting, the informer told Agent Hill he knew a Willie Morgan who was obtaining heroin from an "old man." The informer said he had obtained heroin from Willie Morgan in the past; that Morgan lived in a hotel near Lake Park and 47th Street in Chicago and drove a 1967 blue Buick Riviera.

About one month later, Agent Hill met with this informer a second time and had a conversation with him

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[1] At oral argument defendant waived his claim that the statutory presumption contained in 21 U.S.C.A. § 174 is unconstitutional, in light of *Turner* v. *United States*, 396 U. S. 398 (1970) and *United States* v. *Johnson*, 7 Cir., 427 F. 2d 32, 35 (1970).

at the Federal Bureau of Narcotics. At this time the informer stated that the "old man" previously reported as supplying Willie Morgan with heroin was now known to him as Chester Brown. He stated he had learned Brown's identity from Willie Morgan. Agent Hill then showed a photograph to the informer which the informer identified as Chester Brown.

Agent Hill testified that after this second meeting with the informer he learned from the Federal Bureau of Narcotics files that Chester Brown had been known to his office as a trafficker in narcotics since 1949; that Brown had been convicted in federal court twice for narcotics violations. Agent Hill further testified that Willie Morgan had been known to his office as a drug addict since 1958 and as having been convicted in a state court in 1962 for possession of narcotics.

Agent Hill testified he had a third meeting with this informer in the latter part of February 1968. They were together in a government car at 47th and Lake Park, where the informer pointed out a male person driving a blue Buick Riviera as being the Willie Morgan he had previously mentioned to Hill. Agent Hill testified that the person in the Buick Riviera was the same one he and others later arrested with Chester Brown on March 21, 1968. He further stated that he recorded the license number on the car Willie Morgan was driving and later determined the car was registered to a Willie Morgan.

Agent Hill testified he had a fourth meeting with this informer in early March, 1968, at which time the informer told him that Willie Morgan was presently residing in Room 315 at the Riviera Hotel, 49th and Blackstone.

Agent Hill testified he had a fifth conversation with this informer by telephone on March 20, 1968. He received this call at his office from the informer and was told that Willie Morgan was going to obtain *heroin* from Chester Brown.

Following receipt of this call, Agent Hill went to the Riviera Hotel and then to the vicinity of the 600 block of East 47th Street, where he observed defendant Chester Brown enter a blue Chevrolet which he subsequently de-

termined was registered to one Chester Brown. He saw defendant drive to 4534 S. Indiana, park his car, enter an apartment building and then come out about five minutes later. He testified he then saw defendant drive his Chevrolet to the Riviera Hotel and meet Willie Morgan at the entrance to the hotel. At that time defendant appeared to hand Willie Morgan an object small enough to be contained in defendant's hand. Following a brief conversation, Willie Morgan returned to the Riviera Hotel and defendant Brown left in his car.

Finally, Agent Hill testified that on the following day, March 21, 1968, this informer called him at his office and reported that Willie Morgan was going to obtain *more heroin* from defendant that day. As a result of this call Agent Hill and two other federal narcotics agents proceeded in separate cars to the Riviera Hotel. At about 3:30 p.m. that day the agents observed Willie Morgan leave the hotel, enter a car bearing dealer license plates and drive to 47th and Langley. There they observed defendant Chester Brown enter the passenger side of the Willie Morgan car. From there the agents observed Morgan drive to the 4500 block of South Indiana where he parked his car. Defendant was again observed to enter an apartment building at 4534 S. Indiana and to return about five minutes later. In the meantime Morgan had gone into a restaurant and soon returned to his car where he was joined by defendant. Willie Morgan then drove away with defendant. Morgan and defendant were observed turning around in their seats apparently to see if they were being followed.

At this time the agents attempted to arrest both suspects but were unsuccessful because Morgan's car had not been completely blocked off. A high speed chase followed during which defendant Chester Brown was observed by Agents Hill and Cloud to throw a packet out of his car window. The packet was recovered and found to contain heroin hydrochloride, a narcotic drug. It was this packet of heroin that defendant Chester Brown was convicted of possessing, from which conviction he now appeals.

In addition to the foregoing testimony, as above stated, Agent Hill testified he had known this informer for at least one year prior to October 17, 1967 and had utilized his services as an informer only since October, 1967. He further testified this informer had been convicted of a federal narcotics violation in October, 1967; that from October, 1967 until March 21, 1968 he had furnished Agent Hill with narcotics information between 20 and 30 times and on each occasion such information had been determined to be true and accurate. This information had led to four arrests prior to March 21, 1968 and two federal convictions.

We have burdened this opinion with the foregoing lengthy recital of the evidence in the preliminary hearing on the motion to suppress[2] for the rather obvious reason that it has led to our "firm conviction that the totality of the information possessed by the agents under the circumstances of this case was sufficient to establish probable cause." *United States* v. *Johnson,* 7 Cir., 427 F. 2d 32, 35 (1970). Little more need be said.

The evidence in this case meets the standards found sufficient in *Draper* v. *United States,* 358 U.S. 307 (1959), and rises above the shortcomings found deficient in *Aguilar* v. *Texas,* 378 U.S. 108 (1964) and *Spinelli* v. *United States,* 393 U.S. 410 (1969). See *McCray* v. *Illinois,* 386 U.S. 300 (1967) and *United States* v. *Commissiong,* 2 Cir., 429 F. 2d 834 (1970).

The record discloses that at the conclusion of the Government's case in chief the defendant rested his case without the introduction of any evidence.

We have considered defendant's remaining contention that the evidence introduced by the Government was insufficient to establish defendant's guilt beyond a reasonable doubt. Our examination of the record compels the conclusion that this claim of error is completely without merit. Without indulging in a needless repetition of the standards of review following a jury verdict finding de-

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[2] We have generally followed and accepted the excellent summary of this evidence detailed in the Government's brief, which we find to be supported.

fendant guilty, we readily conclude that on this record the jury was free to reach its finding beyond any reasonable doubt.

The judgment of conviction is affirmed.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

JUDGMENT OF THE COURT

In the United States Court of Appeals For the Seventh Circuit

MONDAY, JANUARY 4, 1971

Before

Hon. *John S. Hastings,* Senior Circuit Judge

Hon. *Roger J. Kiley,* Circuit Judge

Hon. *Thomas E. Fairchild,* Circuit Judge

No. 17633

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. CHESTER BROWN, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court of the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of conviction of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

ORDER DENYING PETITION FOR REHEARING

In the United States Court of Appeals
For the Seventh Circuit

THURSDAY, JANUARY 21, 1971

Before

Hon. *John S. Hastings,* Sr. Circuit Judge

Hon. *Roger J. Kiley,* Circuit Judge

Hon. *Thomas E. Fairchild,* Circuit Judge

No. 17633

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHESTER BROWN,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for rehearing filed in the above-entitled case be, and the same is hereby denied.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1372

CHESTER BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of trafficking in heroin in violation of 21 U.S.C. 174 and sentenced to ten years' imprisonment. The court of appeals affirmed (Pet. App. 1a–6a).

Petitioner's sole contention here is that the arresting agents did not have probable cause for his warrantless arrest, and thus that the heroin, discarded by petitioner during a high speed car chase which resulted in his arrest, should have been suppressed. The opinion of the court below sets forth in detail the facts concerning this

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matter (Pet. App. 2a–5a); on these facts, that court was plainly correct in finding probable cause for the attempt to arrest petitioner before the car in which he was riding drove off at high speed.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971